

**TESTIMONY OF
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**BEFORE THE
SENATE COMMERCE COMMITTEE
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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to present the wireless industry's views on legislation that would create a uniform method of sourcing wireless revenues for state and local tax purposes. I am Tom Wheeler, President and CEO of the Cellular Telecommunications Industry Association (CTIA), representing all categories of commercial wireless telecommunications carriers, including cellular and personal communications services (PCS).

The wireless industry is founded on innovation, competition and safety. With the key support of members of this Committee, these principles have unleashed a telecommunications revolution in the past decade. More than 80 million Americans were wireless subscribers in 1999, an astounding leap from just 4 million in 1990. Wireless competition has accelerated to the point that 238 million Americans can today choose from among 3 or more wireless providers. And, more than 165 million Americans live in areas where they can chose from among five or more wireless providers. Throughout this growth,

CTIA is the international organization which represents all elements of the Commercial Mobile Radio Service (CMRS) industry, including cellular, personal communications services, wireless data. CTIA has over 750 total members including domestic and international carriers, resellers, and manufacturers of wireless telecommunications equipment. CTIA's members provide services in all 734 cellular markets in the United States and personal communications services in all 50 major trading areas, which together cover 95% of the U.S. population.

prices for wireless service have fallen dramatically because of increased competition -- the average per minute rate has dropped by roughly 50 percent since 1990 in markets throughout America. Indeed, these enhanced services, available to millions of Americans, testify to the power and correctness of the policy judgements made by the members of this Committee in the Omnibus Budget Reconciliation Act of 1993 and the 1996 Telecommunications Act. But, with this revolutionary growth of wireless telecommunications, it is not surprising that from time to time it becomes apparent that laws or regulations that worked for more traditional telecommunications services simply do not translate well to wireless communications.

I am here today to discuss with this Committee the work on one such area -- the assignment of wireless services to their proper taxing jurisdiction.

The Problem

It is the mobile nature of wireless telecommunications that makes the assignment of wireless services and revenues for tax purposes so complicated. Chart 1 illustrates some of the practical problems. If I make a phone call from my back yard, located in Town A, and that call is picked up at the closest cell site, in Town B, and routed to the nearest switch in Town C -- *where should the call be taxed?* States and localities have adopted a variety of methodologies to answer that question, including: siting the taxes to the location of the originating cell site, the originating switch, or the billing address of the customer, which may or may not be a home address. All of these methodologies are legitimate and were adopted in good faith by state and local officials, but all have their shortfalls. For example, both the originating cell site and the originating switch in my illustration are outside the taxing

jurisdiction from which I am making the call. To complicate matters further, Towns A, B, and C may all be using different methodologies, and that could result in multiple claims on the same revenue for taxation. These are just some of the issues that the tax departments of wireless carriers must deal with daily at the local level.

Chart 2 offers some real-life illustrations of what the current system means to consumers. Suppose a businessman is driving from Baltimore, MD, to Philadelphia, PA, making phone calls throughout the two-hour drive. During the course of this trip, the consumer will have passed through 12 state and local tax jurisdictions, each with their own telecommunications tax rates and rules. Even if there were not competing methodologies complicating the picture, the administrative difficulty for the wireless carrier of correctly determining tax rates and rules for 12 different jurisdictions, passed through in just a few hours is tremendous. Likewise, the administrative difficulties for the 12 taxing jurisdictions in monitoring compliance with their laws are severe.

The administrative burdens of the current system are even more striking when viewed at the national level (Chart 3). Let's use as an example, a businesswoman living in Senator Brownback's home state of Kansas. In one day of business travel, she makes 3 wireless calls on the drive to the airport; flies to Denver where she makes 16 calls during her cab rides from the airport to her meeting and back; then flies on to Seattle where she picks up a car to drive to Tacoma. In the roundtrip between the Seattle Airport and the Tacoma meeting site, our businesswoman makes another 19 wireless calls, before catching the dinner flight back to Kansas City. The poor woman makes her final call of the day on the drive home from the airport to tell her family she'll be there soon. During this one harried business day, 39 wireless calls have been made, which requires her wireless carrier to keep

track of the tax rates and rules in 26 different state and local taxing jurisdictions.

But as difficult as all this is for industry to complete and for state and local governments to monitor – think what the consumer faces. From month to month, depending on where the consumer travels, the consumer’s state and local tax bill will change. This rightly leaves customers scratching their heads. If enacted, this uniform sourcing legislation will go a long way towards solving this problem for consumers.

Let me also add that all these problems face even greater challenges in the near future, challenges posed by home calling areas that are growing and the latest ways consumers are buying wireless service. Larger home service areas may encompass more and more state and local taxing jurisdictions. And the new “bucket of minutes” billing plans fundamentally complicate proper tax determination – particularly of roaming – as the allocation of minutes to calls and revenues becomes unclear. In short, Mr. Chairman, the current system doesn’t work for consumers, industry or state and local governments – and these problems will only get worse in the months and years ahead.

Uniform Sourcing Proposal, S.1755, the Mobile Telecommunications Sourcing Act

A new method of sourcing wireless revenues for state and local tax purposes is needed to provide carriers, taxing jurisdictions and consumers with an environment of certainty and consistency in the application of tax law; and to do so in a way which does not change the ability of states and localities to tax these revenues. After more than three years of discussions, CTIA and representatives from the National Governors’ Association, the National League of Cities, the Federation of Tax Administrators, the Multistate Tax Commission, the National Conference of State Legislatures, and

other state and local leaders have worked to develop a nationwide, uniform method of sourcing and taxing wireless revenues.

Under the leadership of Senators Brownback and Dorgan, we were able to come together to forge this proposal. Senators Brownback and Dorgan have introduced legislation – S.1755 – that implements the ideas we have worked so long to craft. With the leadership and assistance of Chairman McCain, Telecommunications Subcommittee Chairman Burns, Senator Hollings and all members of this committee, it is our hope that this legislation will soon become the law.

It is important to stress that this legislation does not change the ability of states and localities to tax wireless revenues - it leaves the determination of the tax rate and base to the state and local taxing authorities. In other words, this proposal does not address, change or effect *whether* a jurisdiction may tax, it only proscribes *how* it may tax.

Which Taxes Are Covered?

It is important to distinguish which taxes would be sourced to a "place of primary use." To state it most simply, uniform sourcing applies only to "transaction taxes" – or those paid by the consumer, typically itemized on a customer's bill, and collected by wireless companies. The Mobile Telecommunications Sourcing Act has no impact on federal taxes or fees, such as the Federal Excise Tax or the Federal Universal Service Fee. These federal taxes and fees are not included in the scope of this legislation because they apply throughout the nation – unlike state and local taxes which apply only in their particular geographic area.

I would emphasize that this legislation addresses the taxes paid by the consumer. Our industry

is acting as the administrator of these taxes, imposed on consumers by literally thousands of state and local jurisdictions. So, I would again like to compliment the state and local officials who have worked so hard to develop this proposal to simplify the administrative duties of our industry. I believe the legislation will also make it easier for the state and local officials who monitor our industry to make sure we do the job right. But, great credit is due these state and local officials for working so closely with us on this important issue.

How the Uniform Sourcing Legislation Works

Place of Primary Use (PPU)

There are two major components to the uniform sourcing legislation - the "place of primary use" and state by state databases identifying state and local taxing jurisdictions. Let me start with "the place of primary use." This legislation defines that for the purposes of state and local taxation, the consumer's purchase of taxable wireless telecommunications services, including charges while roaming anywhere in the United States, have taken place from a single address – a "place of primary use." Then, only the taxing jurisdictions in which that address is located may tax the charges. I would note that there are often more than one taxing jurisdiction for any particular address, given the multiple layers of state and local governance (such as, the school district, city, county, and state.)

The "place of primary use" is defined as the street address most representative of where the customer's use of mobile telecommunications services primarily occurs. It must be either the residential street address or the primary business street address of the customer. That address also must be within the licensed service area of their home service provider. Customers will be asked to provide their "place

of primary use" when they sign up for service or renew their contracts.

For the convenience of the consumer, after the effective date of the legislation (two years after passage to allow for necessary changes in state laws and regulations) the legislation allows carriers to treat the address they have been using for tax purposes as the "place of primary use" for the remaining term of any existing service contract. After that, when the service contract is extended, renewed, or changed, the customer provides their "place of primary use."

Customers may also change their "place of primary use" designation if they find that their use of the wireless phone changes. And, similar to any other tax situation in which the party being taxed (in this case, the consumer) specifies an address for tax purposes -- should there be any dispute over whether the customer has designated the appropriate address as the "place of primary use," the legislation provides state and local governments the authority to review its accuracy, and change it if necessary.

To illustrate how the "place of primary use" works let's go back to our harried businesswoman from Kansas City. Because this was her business wireless phone, the street address of her company is her "place of primary use." Under this legislation, the 39 wireless calls she made in one day of business travel, would, for tax purposes, be deemed to have all taken place from her Kansas City address. So, only the three taxing jurisdictions – city, county and state – in which her business address is located would have the authority to tax the 39 calls.

State by State Databases of Taxing Jurisdictions

Today, even after wireless carriers have identified which address is going to be used for tax purposes, it is often difficult to determine the appropriate taxing jurisdictions for that address.

Annexations of unincorporated areas and shifting local boundaries are a frequent cause of this difficulty. And, as a result, the second major piece of this legislation is the provision of state-level databases which assign each address within that state to the appropriate taxing jurisdictions. So, that all carriers can use the database, and so the same code does not refer to more than one taxing jurisdiction, the legislation provides for a nationwide standard numeric format for codes. The format must be approved by the Federation of Tax Administrators and the Multistate Tax Commission, organizations representing the state and local officials who administer taxes.

A state or the local jurisdictions within the state may, but are not required to, develop these electronic databases. If a carrier utilizes the state database, and if there is an error due to a mistake in the database (e.g., the database indicated our businesswoman's address was in Overland Park, Kansas, when, in fact, the address is in Kansas City, Kansas), the database is corrected and the carrier utilizes the corrected database. What this legislation avoids is the costly and difficult process of going back, figuring out the amount of taxes paid to the wrong jurisdiction, then figuring out where they should have been paid. Instead, this legislation applies some practical common sense.

Only if a state chooses not to provide a database, a carrier may develop a database that assigns taxing jurisdictions based on a zip code of nine or more digits. The carrier is required to exercise due diligence in creating this database. The legislation specifies that the carrier must expend a reasonable amount of resources to create and maintain the database, use all reasonably attainable data, and apply internal controls to promptly correct mis-assignments. If such standards are met, the same processes that apply if a state-created database contains an error, apply to the carrier-created database.

I emphasize that state and local governments maintain authority over both the 'place of primary

use" and the database. Any taxing jurisdiction may request the carrier to make prospective changes to a customer's "place of primary use" if it feels the one provided by the customer doesn't meet the required definition. The affected taxing jurisdictions simply get together, determine the correct place of primary use, then notify the carrier. Likewise, if taxing jurisdictions determine that an address has been mis-assigned to the wrong taxing jurisdiction, the taxing jurisdictions simply notify carriers of the error, and it is our responsibility to make the correction.

For this proposal to work, it will ultimately require the implementation of the uniform sourcing rules by all states, in order to eliminate the problems that would result if only some states "uniformly sourced" the wireless calls made by their residents in other states. It is for this reason - the need for a standard and nationwide approach - that government groups and industry began to look for a solution to the problems of taxing wireless calls. Only federal legislation can accomplish this, but because this legislation recognizes that individual state and local tax laws and regulations might need to be changed to conform to the federal law, the effective date of this legislation is not until two years after enactment.

Conclusion

In conclusion, the Mobile Telecommunications Sourcing Act would **not** impose any new taxes or change state or local authority to tax wireless telecommunications; nor would it mandate any expenditure of state or local funding or in any way reduce the tax obligations of the wireless industry. Instead, it would ensure that wireless telecommunications services are taxed in a fair and efficient manner, one that benefits all concerned - consumers, state and local governments, and industry.

I am honored to represent the wireless industry today and to pass along to you the wireless

industry's enthusiastic endorsement of the Mobile Telecommunications Sourcing Act.

The telecommunications industry is truly reshaping our world - which brings new challenges and opportunities every day. I am proud of the cooperative effort among state and local governments and industry on this proposal. And, I again compliment the leadership of Senators Brownback, Dorgan and the other members of this Committee for turning our proposal into the legislation we discuss today. The wireless industry stands ready to participate in more of these partnerships, helping to create new systems of governance for the 21st century.

Thank you for your consideration of our views.